

Memorandum

To : Susan Lange
Deputy Superintendent
Finance, Technology & Administration Branch

Date: January 24, 2003

From : Michael E. Hersher
Deputy General Counsel
Legal Division

Subject : Teacher Credentialing Issues In Charter Schools

You have requested a legal opinion as to the requirements of Education Code section 47605(l) regarding the credentials of teachers in charter schools. Specifically, you ask: 1) whether valid credentials are a condition of apportionment of state funds to charter schools; 2) whether proper teacher assignment to a particular class is a condition of apportionment; and 3) whether county offices of education are required to monitor the credentials of teachers in charter schools.¹

Section 47605(l) states:

Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to the periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

1. Credentials As A Condition Of Apportionment

While Section 47605(l) clearly requires certain charter school teachers to hold valid credentials, it does not expressly address whether the credential requirement is a condition of apportionment of state funds. When the language of a statute is not clear on its face, it is necessary that the language be construed in accordance with established interpretative principles to determine the statute's meaning and proper application. (*Caminetti v. United States*, 242 U.S. 470, 485 (1917) .) Administrative agencies and the

¹ This opinion is limited to the requirements of current state law related to teachers in charter schools. It does not address any issue that arises under the federal No Child Left Behind Act, 20 U.S.C. §6319, to the extent that that provision of federal law may affect California teacher credential requirements.

courts of this State have employed numerous such interpretive principles to give meaning to particular statutes. Our ultimate goal is to give effect to the central purpose of the statute, giving its language a reasonable and common sense understanding and attempting at all times to harmonize conflicting or inconsistent provisions of law. (*DeYoung v. San Diego*, 147 Cal.App.3d 11, 17 (1983) .)

Whether a particular statutory requirement constitutes a condition of apportionment has been raised in the past through audit exceptions submitted by school district annual audits or by compliance audits conducted by the State Controller's Office. In prior opinions, this office has observed that *every* requirement imposed upon a school district by the Education Code is not *automatically* a condition of apportionment. Each statutory scheme must be analyzed on its own terms to ascertain the will of the Legislature as to the consequences of noncompliance with a statutory mandate. (*Morris v. County of Marin*, 18 Cal.3d 901, 909-910 (1977) [no mechanical rule for determining whether a statute using the term "shall" is directory or mandatory].) We have opined in particular circumstances that the Legislature's use of the term "condition of apportionment" in one provision of a statute, and the omission of that term in another, indicated legislative intent that the latter provision was *not* a condition of apportionment. (*Craven v. Crout*, 163 Cal.App.3d 779, 783 (1985) .)

That principle of interpretation does not appear to apply to Section 47605(l), however, when that provision is construed in light of other provisions of law related to teacher credentialing requirements. For all public schools that are not charter schools, Education Code section 46300 states that:

In computing average daily attendance of a school district or county office of education, there shall be included the attendance of pupils while engaged in educational activities required of those pupils and *under the immediate supervision and control of an employee of the district or county office who possessed a valid certification document, registered as required by law.* (Emphasis added.)

Since ADA data are the basis on which state funds are apportioned to the school districts, it is clear that the supervision and control of a certificated teacher is *usually* a condition of apportionment. In our view, the intent of the Legislature in enacting Section 47605(l) was to require charter schools to follow the same rules regarding teacher credentials that other public schools were required to follow, at least with regard to core or college preparatory courses. If there were certain consequences related to teacher credentialing that *were not* applicable to charter schools, the Legislature would have created an express exemption when it amended the charter school law to

require credentialed teachers. Since there is no express exemption from the ordinary effect of Section 46300, we conclude that Section 46300 applies with equal force to charter school ADA.² This interpretation harmonizes the two statutes related to teacher credentialing requirements and is consistent with the strong state policy interest in having students instructed by teachers with proper qualifications. (*People v. Hull*, 1 Cal.4th 266, 272 (1991).)

This conclusion does not apply, however, with regard to "noncore, noncollege preparatory courses" offered by charter schools, since Section 47605(l) expressly states that charter schools are to be given "flexibility" with regard to such courses. The plain language of the statute gives charter schools the flexibility to hire teachers without valid California credentials for courses that can be fairly described as "noncore, noncollege preparatory courses." (*Wallace v. Dept. of Motor Vehicles*, 12 Cal.App.3d 356 (1970).) Since we conclude that credentials are not required for such courses in charter schools, the lack of a valid credential by a teacher of such a course would have no effect on charter school apportionments.

2. Teacher Assignment As A Condition Of Apportionment

You further ask whether charter schools may receive apportionments for the attendance of students under the supervision of teachers who hold valid credentials, but are assigned to teach courses that are not within the subject area of their credential. Section 47605(l) does not expressly state that charter schools are required to assign teachers to courses within their subject matter credential. Moreover, Section 46300, which governs apportionments for regular K-12 schools, also does not specifically refer to the assignment of teachers to particular subject area courses, or make such assignment a condition of apportionment. We are unaware of any prior judicial decision, legal opinion, or audit finding that has disallowed a school district apportionment based on teacher misassignment.

We believe it is unlikely that the Legislature intended to apply to charter schools a rule that has never before applied to regular K-12 schools. The clear legislative purpose of Section 47605(l) was to subject charter schools to the *same* credential requirements that apply to regular K-12 schools, at least in the core or college preparatory subject areas. Given that legislative intent, and the shortage of credentialed teachers in all subject areas statewide, we conclude that teacher assignment is not a condition of apportionment with regard to either charter schools or regular K-12 schools. (*DeYoung v.*

² This opinion does not imply that charter school attendance accounting is governed by Education Code section 46300. Charter school student attendance is recorded and reported under 5 California Code of Regulations section 11960 in school days on which a student is engaged in educational activity required of them by the charter school.

San Diego, 147 Cal.App.3d 11, 17 (1983) [statutes should be construed to avoid harsh or unintended consequences].)

3. Monitoring Of Credential Issues By County Offices Of Education

Finally, you ask whether county offices of education are required to monitor the credentials of teachers in charter schools pursuant to Education Code section 44258.9. In our opinion, county offices are *not* required to monitor charter school teacher credentials, either for holding valid certificates or for proper assignment within a credential. As noted above, Section 47605(l) applies certain specific credential requirements to charter schools, but expressly states that charter school credential documents shall be made available for periodic inspection "by the chartering authority." Given that charter schools are generally exempt from other provisions of the Education Code under Section 47610, and given the specific language of Section 47605(l), we conclude that *only the chartering authority* has oversight over charter school compliance with Section 47605(l). Therefore, county offices are not required to monitor charter school teacher credentials in the same manner as regular K-12 districts.³ It further follows that county offices are not subject to the penalties imposed by Section 45067 for paying a charter school teacher who does not hold a valid credential.⁴

Please contact me if you have any further questions regarding the foregoing opinions.

³ We note that this conclusion is consistent with Memorandum 98-9821 from Sam W. Swofford, Executive Director of the Commission on Teacher Credentialing, to all local education agencies, dated November 16, 1998.

⁴ On a related issue, we further conclude that the penalty required under Section 45037 *only* applies when a county office of education pays a teacher who does not hold *any* valid credential, and does not apply to the payment of teachers who are misassigned. The plain language of the statute refers *only* to holding valid certification document and does not mention teacher assignment. We presume the Legislature intended only what the statute says and did not intend to expand the statute's application to circumstances beyond its express terms. (*Wallace v. DMV, supra*, 12 Cal.App.3d 356.)